

CRIMINAL JUSTICE (SCOTLAND) ACT 2016

EXPLANATORY NOTES

OVERVIEW OF THE ACT

Part 3 – Solemn Procedure

Section 79 – Pre-trial time limits

190. Sections 79 to 81 make changes to the procedure followed in proceedings on indictment in the sheriff court.
191. Section 80 introduces a requirement on the prosecution and the defence to communicate and to lodge a written record of their state of preparation in advance of the first diet.
192. Section 81 provides that the arrangement by which a sheriff court indictment assigns dates for both the first diet and the trial ceases to have effect. Instead the court will appoint a trial diet at the first diet, or at a continuation of it, having ascertained the parties' state of preparation.
193. Section 79 makes changes to the time limits prescribed in section 65 of the 1995 Act which are intended to allow time for the procedure set out in section 80. In particular the period during which the accused can be remanded in custody pending a first diet and trial are brought in line with the corresponding High Court limits to reflect the altered pre-trial procedure.
194. Subsection (2) amends section 65 of the 1995 Act to set out revised time limits for various procedural steps in proceedings on indictment in the sheriff court.
195. The amendments made by subsection (2)(a) and (b) prevent the accused being tried on indictment in the sheriff court where the first diet is not commenced within 11 months of the first appearance on petition. That period can be extended by the court under section 65(3) of the 1995 Act. The 12-month period within which the trial must be commenced, as specified in section 65(1)(b) of the 1995 Act is unaffected. The amended provisions mirror the equivalent arrangements for proceedings in the High Court.
196. Subsection (2)(c) amends the provisions in section 65(4) of the 1995 Act concerning the periods during which the accused person who is committed until liberated in due course of law (i.e. imprisoned to await the outcome of a trial) can be detained by virtue of that committal where an indictment has been served in respect of the sheriff court. The effect of the amendment is that the accused person must be liberated after 110 days, if no first diet has been held, and 140 days if such a diet has been held, unless the trial begins within that period. These periods can be extended by the court under section 65(5) of the 1995 Act. Again, the amended provisions mirror High Court procedure. To assist in the calculation of the time period, subsection (2)(d) amends section 65(9) of the 1995 Act to provide that the first diet in the sheriff and jury court shall be taken to commence when it is called.
197. Subsection (3) amends section 66(6) of the 1995 Act to replace the arrangements whereby an accused person to be tried on indictment in the sheriff court is given notice of the first diet and trial diet at the same time as being served with the indictment.

*These notes relate to the Criminal Justice (Scotland) Act 2016
(asp 1) which received Royal Assent on 13 January 2016*

Instead, the accused will be given notice only of the first diet and the date of the trial diet will be fixed at the first diet. The period within which the first diet must take place will be increased from 15 clear days from the service of the indictment to 29 clear days; this change makes the sheriff court practice consistent with High Court practice.

198. Subsection (4) amends section 72C(4) of the 1995 Act for consistency with the amendment made by subsection (3). Section 72C(4) is a provision in similar terms to section 66(6), it deals with the situation where a fresh indictment has to be served on an accused because a preliminary hearing before the High Court either did not take place when it was supposed to, or was deserted for the time being without another hearing being appointed.